

AO 106A (08/18) Application for a Warrant by Telephone or Other Reliable Electronic Means

UNITED STATES DISTRICT COURT

for the
District of Delaware

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
THE BODY OF MARQUIS LOPEZ, SR. FOR DNA
COLLECTION

} Case No. 22- 22M

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the _____ District of Delaware, there is now concealed (identify the person or describe the property to be seized):

See ATTACHMENT B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- evidence of a crime;
 contraband, fruits of crime, or other items illegally possessed;
 property designed for use, intended for use, or used in committing a crime;
 a person to be arrested or a person who is unlawfully restrained.

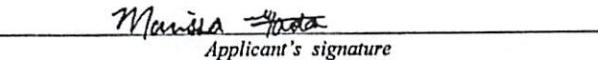
The search is related to a violation of:

| <i>Code Section</i> | <i>Offense Description</i> |
|----------------------|--|
| 18 U.S.C. 922 (g)(1) | Possession of a Firearm by Person Prohibited |

The application is based on these facts:

See Attached Affidavit of Probable Cause

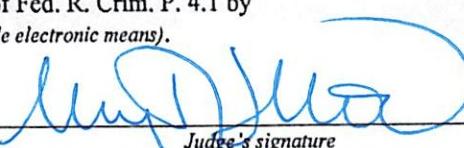
- Continued on the attached sheet.
 Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

Marissa Favata, Special Agent, ATF
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone _____ (specify reliable electronic means).

Date: 01/19/2022


Judge's signature

Hon. Sherry R. Fallon, U.S. Magistrate Judge

Printed name and title

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN THE MATTER OF THE SEARCH OF
THE BODY OF MARQUIS LOPEZ, SR.
FOR DNA COLLECTION

Case No. 22-

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR SEARCH WARRANT

I, Marissa Favata, Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), being duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. The ATF and Wilmington Police Department ("WPD") have been investigating Marquis Lopez, Sr. (hereinafter "LOPEZ") for violations of 18 U.S.C. § 922(g) (Possession of a Firearm and Ammunition by a Prohibited Person). This affidavit is being submitted in support of an application for a search warrant pursuant to Federal Rule of Criminal Procedure 41 to obtain samples of Deoxyribonucleic Acid ("DNA") for comparison purposes in the form of saliva from LOPEZ, a man born on August 3, 1982, assigned a FBI number ending in 2EB2, assigned a Delaware SBI number ending in 3941, and otherwise depicted and described in Attachment A. The warrant would authorize members of the ATF, or their authorized representatives, to obtain DNA contained within saliva samples from LOPEZ, as described in Attachments B.

2. I submit this affidavit for the limited purpose of securing the requested warrant, and therefore I have not included details of every aspect of this investigation. Rather, I have set forth only those facts that I believe are necessary to establish probable cause supporting the warrant. I have not, however, intentionally omitted any information that would tend to defeat a determination of probable cause. The information contained in this affidavit is based upon my personal

knowledge, my review of documents and other evidence, and my conversations with other law enforcement officers and other individuals.

3. On December 7, 2021, the Grand Jury for the District of Delaware returned a one-count indictment on LOPEZ charging him with possession of a firearm by a person prohibited in violation of 18 U.S.C. § 922(g)(1). The firearm at issue in this case, a Smith and Wesson, SD40VE, 40 Caliber semi-automatic pistol bearing serial number FCD9663, was swabbed by WPD for DNA and the swabs were retained. Therefore, I respectfully request that this Court find probable cause that evidence of the criminal violation is contained in the form of DNA in saliva in the possession of LOPEZ.

AFFIANT BACKGROUND

4. Your Affiant is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), and has been employed as such since August 2019. I am currently assigned to the ATF Baltimore Field Division, Wilmington Field Office. I have a Bachelor’s Degree in Science majoring in Health Education with a concentration in Community Outreach from East Stroudsburg University and a Master’s Degree in Science majoring in Management from the Johns Hopkins University Public Safety Leadership Program. In October 2018, I attended the Department of Homeland Security’s Criminal Investigator Training Program and the ATF’s Special Agent Basic Training at the Federal Law Enforcement Training Center for a combined total of 26 weeks. I received extensive training in the provisions of firearms and narcotics laws administered under Title 18, Title 21, and Title 26 of the United States Code.

5. I am an “investigative or law enforcement officer of the United States” within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant.

6. I have conducted and assisted in several investigations involving the illegal possession of firearms, federal controlled substance laws, and the commission of violent crimes. I have received training and participated in various types of investigative activities including, but not limited to: (a) physical surveillance; (b) debriefing defendants, witnesses, informants, and other individuals who had knowledge of firearms and controlled substance laws; (c) the execution of search warrants; (d) the consensual monitoring and recording of conversations; and (e) handling and maintaining evidence.

7. I know, based on training and experience, that DNA can be found on items such as clothing and firearms, and can be compared to a sample of DNA from a known person. This comparison can help identify or eliminate suspects.

PROBABLE CAUSE

8. At 9:14 a.m. on August 16, 2021, WPD officers responded to a call for service, regarding shots fired between two (2) vehicles shooting back and forth at each other at the intersection of South Broom and Chestnut Street in Wilmington, Delaware. WPD responded to the area and located several shell casings in the intersection, confirming discharge of a firearm. Additional calls for police assistance followed directing officers to the 1900 block of Chestnut Street, approximately four (4) blocks away from the original call, where officers responded and located several more shell casings. Approximately 15 minutes later, WPD responded to the 1000 block of South Grant Avenue, approximately one mile from the original shell casings, for a vehicle parked in the roadway with a subject suffering gunshot wounds.

9. WPD located LOPEZ seated in the driver's seat of a rented Silver Mazda CX-5 (South Carolina Registration SGW376) bleeding from several parts of his body. An eyewitness advised officers that a black female passenger, later identified as Crystal Bailey (Black Female 3/17/1982), exited the passenger seat of the Mazda when the eyewitness heard LOPEZ direct BAILEY to "get the gun out of the car."

10. Hearing this information, WPD canvassed the area and located a Smith and Wesson, SD40VE, 40 Caliber semi-automatic pistol bearing serial number FCD9663 discarded under a vehicle approximately half of a block away from the vehicle LOPEZ occupied. Upon visual inspection of this firearm, it appeared to have a red substance on it which was consistent with blood. The firearm was recovered swabbed for DNA, and test fired. The test fire conducted by WPD created potential leads to a spent shell casing later located in the 1600 block of Chestnut Street (path of described vehicles shooting at each other), and a spent shell casing recovered on the driver side floorboard of the Mazda beneath LOPEZ.

11. Further investigation revealed that LOPEZ has been convicted of a crime punishable by a term of imprisonment exceeding one year. Specifically, in 2001, LOPEZ was convicted of Possession with Intent to Deliver a Controlled Substance, and in 2005 of Forgery 2nd Degree in the New Castle County, Delaware, Superior Court. Accordingly, at the time LOPEZ possessed the firearm on August 16, 2021, he was prohibited from possessing a firearm and knew or should have known that he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

12. The firearm was test-fired and found to be operable, thereby meeting the definition of firearm pursuant to 18 U.S.C. § 921. While not a firearms nexus expert, Your affiant, through training and experience, is aware that there are currently no firearms manufacturers in the State of Delaware and that this firearm likely travelled through interstate commerce.

13. On or about August 16, 2021, a Delaware Justice of the Peace search warrant was issued for the retrieval of DNA via buccal swab. WPD officers executed the warrant but the container holding the sample inadvertently opened in transport. As such, I am respectfully requesting authorization to retrieve another sample of LOPEZ's DNA via a buccal swab.

14. On the 7th of December this case was presented to a Grand Jury in the United States District Court for the District of Delaware. The Grand Jury returned an indictment charging

LOPEZ with one (1) count of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), to wit: Possession of a Firearm by a Prohibited Person.

DNA AUTHORIZATION REQUEST

15. Based on my training and experience, I believe that LOPEZ's DNA may be on the firearm recovered half a block away from which the officers located him. A known sample of his DNA is required to test and compare all DNA recovered. Accordingly, I am requesting authorization for a warrant to obtain samples of DNA for comparison purposes in the form of saliva from LOPEZ to compare to the swabs taken from the firearms and magazines that I believe were possessed by LOPEZ in violation of 18 U.S.C. § 922(g) (Possession of a Firearm and Ammunition by a Prohibited Person).

16. United States District Court for the District of Delaware Chief Magistrate Judge Mary Pat Thyng previously authorized a Search Warrant for LOPEZ's DNA on January 5, 2022 in Criminal Action Number 22-03M. However, LOPEZ had a COVID-19 exposure at the Federal Detention Center in Philadelphia thereafter and was in quarantine, making the execution of this warrant unsafe. The requisite 14-day time period expires today, January 19, 2022.

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17. I respectfully request that the Court issue a warrant authorizing members of the ATF, or their authorized representatives, to obtain DNA samples from LOPEZ so that the DNA samples may be compared to the swabs taken from evidence recovered in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Marissa Favata

Marissa Favata, Special Agent
Bureau of Alcohol, Tobacco,
Firearms, and Explosives

Sworn to me over the telephone and signed by me pursuant to Fed. R. Crim. P. 4.1, *on Jan. 19, 2022.*

Sherry R. Fallon

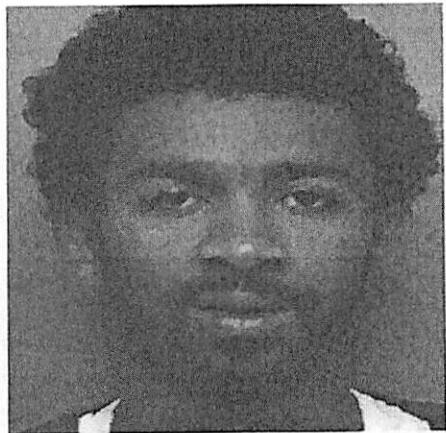
THE HONORABLE SHERRY R. FALLON
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Photograph of Person to be Searched

Marquis **LOPEZ Sr.**
YOB: 1982

Last four digits of FBI number: 2EB2
Last four digits of Delaware SBI number: 3941



ATTACHMENT B
Description of Items to be Seized

Buccal (oral) swabs of the inside of Marquis LOPEZ's mouth limited to the extent where sufficient samples of DNA are obtained.